

1 HONORABLE ROBERT S. LASNIK  
2

3 MICHAEL E. McFARLAND, JR., #23000  
4 Evans, Craven & Lackie, P.S.  
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6 Spokane, WA 99201-0910  
7 (509) 455-5200; fax (509) 455-3632  
Attorneys for Defendant

8 IN UNITED STATES DISTRICT COURT  
9 FOR THE WESTERN DISTRICT OF WASHINGTON

10 ANA LUGO,

11 Plaintiff,

12 Case No. 2:21-cv-00147-RSL

13 vs.

14 HIGHLINE SCHOOL DISTRICT,

15 Defendant.

16 DEFENDANT'S ANSWER TO  
17 PLAINTIFF'S COMPLAINT AND  
18 DEMAND FOR JURY

19  
20 COMES NOW Defendant HIGHLINE SCHOOL DISTRICT ("HSD") by  
21 and through its attorneys of record of the law firm of Evans, Craven & Lackie,  
22 P.S., and enter this Answer to Plaintiff's Complaint for Violations of USERRA,  
23 Demand for Damages and Trial by Jury, as follows:

24  
25 **I. PARTIES AND JURISDICTION**

26 1.1 Admit.

27 1.2 Admit.

28  
29 ANSWER TO PLAINTIFF'S COMPLAINT AND  
30 DEMAND FOR JURY - page 1

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1.3 Without admitting the truth of the “acts complained of,” HSD admits that the alleged acts set forth in the Complaint occurred in the Western District of Washington.

## 1.4 Admit.

## 1.5 Admit.

## 1.6 Admit.

## II. FACTS

2.1 HSD incorporates the above paragraphs as set forth verbatim herein.

## 2.2 Admit.

2.3 HSD admits that it first hired Plaintiff in November 2005 as a tutor and paraeducator. HSD admits that it then hired Plaintiff in November 2006 and November 2007 as a tutor.

2.4 HSD admits that in December 2007 it hired Plaintiff as a paraeducator and an office assistant. That position lasted through June 2008. HSD admits the remaining allegations contained in Paragraph 2.4 of Plaintiff's Complaint.

## 2.5 Admit.

## 2.6 Admit.

## 2.7 Admit.

1       2.8 HSD denies the allegation contained in Paragraph 2.8 of Plaintiff's  
2 Complaint.  
3

4       2.9 Admit.

5       2.10 HSD is without sufficient information to admit or deny the  
6 allegations contained in Paragraph 2.10 of Plaintiff's Complaint and therefore  
7 deny the same.  
8

9  
10      2.11 HSD denies the allegations contained in Paragraph 2.11 of  
11 Plaintiff's Complaint.  
12

13      2.12 HSD denies the allegations contained in Paragraph 2.12 of  
14 Plaintiff's Complaint.  
15

16      2.13 HSD denies the allegations contained in Paragraph 2.13 of  
17 Plaintiff's Complaint.  
18

19      2.14 HSD denies the allegations contained in Paragraph 2.14 of  
20 Plaintiff's Complaint.  
21

22      2.15 HSD denies the allegation contained in Paragraph 2.15 of Plaintiff's  
23 Complaint.  
24

25      2.16 HSD is without sufficient information to admit or deny the  
26 allegations contained in Paragraph 2.16 of Plaintiff's Complaint and therefore  
27 deny the same.  
28

29  
30 ANSWER TO PLAINTIFF'S COMPLAINT AND  
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1       2.17 HSD is without sufficient information to admit or deny the  
2 allegations contained in Paragraph 2.17 of Plaintiff's Complaint and therefore  
3 deny the same.  
4

5       2.18 HSD is without sufficient information to admit or deny the  
6 allegations contained in Paragraph 2.18 of Plaintiff's Complaint and therefore  
7 deny the same.  
8

9       2.19 Admit.  
10

11       2.20 Admit.  
12

13       2.21 HSD is without sufficient information to admit or deny the  
14 allegations contained in Paragraph 2.21 of Plaintiff's Complaint and therefore  
15 deny the same.  
16

17       2.22 HSD admits that in July 2019, Plaintiff called Laura Castaneda and  
18 advised her that her military leave had been extended to January 2020. HSD is  
19 without sufficient information to admit or deny the remaining allegations in  
20 Paragraph 2.22 and therefore denies the same.  
21

22       2.23 HSD admits that on November 4, 2019, Plaintiff emailed Candy  
23 Yarbrough a letter "explaining [her] symptoms" and asking how to get the letter  
24 to her neurologist. HSD admits that Ms. Castaneda thereafter emailed Plaintiff  
25 as depicted in Paragraph 2.23 of Plaintiff's Complaint.  
26

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29

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1       2.24 HSD is without sufficient information to admit or deny the  
2 allegations contained in Paragraph 2.24 of Plaintiff's Complaint and therefore  
3 deny the same.  
4

5       2.25 HSD denies the allegations contained in Paragraph 2.25 of  
6 Plaintiff's Complaint.  
7

8       2.26 HSD denies the allegations contained in Paragraph 2.26 of  
9 Plaintiff's Complaint.  
10

11       2.27 HSD admits that Laura Castaneda had a phone conversation with  
12 Plaintiff around February 2020, but denies the allegations contained in Paragraph  
13 2.27 of Plaintiff's Complaint regarding the content of that conversation.  
14

15       2.28 HSD denies the allegations contained in Paragraph 2.28 of  
16 Plaintiff's Complaint.  
17

18       2.29 Admit.  
19

20       2.30 HSD denies the allegations contained in Paragraph 2.30 of  
21 Plaintiff's Complaint.  
22

23       2.31 HSD denies the allegations contained in Paragraph 2.31 of  
24 Plaintiff's Complaint.  
25

26       2.32 Admit.  
27

28  
29       ANSWER TO PLAINTIFF'S COMPLAINT AND  
30       DEMAND FOR JURY - page 5

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2.33 HSD denies the allegations contained in Paragraph 2.33 of Plaintiff's Complaint.

### 2.34 Admit.

2.35 HSD is without sufficient information to admit or deny that DOL/VETS conducted an investigation, but admit that DOL/VETS incorrectly concluded that HSD violated USERRA.

2.36 HSD admits that the District then offered to reemploy Ms. Lugo. HSD denies the remaining allegations contained in Paragraph 2.36 of Plaintiff's Complaint.

2.37 Paragraph 2.37 of Plaintiff's Complaint consists of legal conclusions to which no response is deemed necessary. To the extent a response is deemed necessary, HSD deny all allegations in this paragraph.

2.38 Admit.

### III. CAUSES OF ACTION

## **CAUSE OF ACTION NO. 1- VIOLATION OF 38 U.S.C. § 4312-4313**

3.1 Paragraph 3.1 of Plaintiff's Complaint consists of legal conclusions to which no response is deemed necessary. To the extent a response is deemed necessary, HSD denies all allegations in this paragraph.

### 3.2 Admit.

ANSWER TO PLAINTIFF'S COMPLAINT AND  
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1       3.3   Admit.

2       3.4   HSD is without sufficient information to admit or deny the  
3       allegations contained in Paragraph 3.4 of Plaintiff's Complaint and therefore  
4       denies the same.

5       3.5   HSD denies the allegations contained in Paragraph 3.5 of Plaintiff's  
6       Complaint.

7       3.6   Paragraph 3.6 of Plaintiff's Complaint consists of legal conclusions  
8       to which no response is deemed necessary. To the extent a response is deemed  
9       necessary, HSD denies all allegations in this paragraph.

10       3.7   HSD denies the allegations contained in Paragraph 3.7 of Plaintiff's  
11       Complaint.

12       3.8   HSD denies the allegations contained in Paragraph 3.8 of Plaintiff's  
13       Complaint.

14       3.9   HSD denies the allegations contained in Paragraph 3.9 of Plaintiff's  
15       Complaint.

16       3.10   HSD denies the allegations contained in Paragraph 3.10 of  
17       Plaintiff's Complaint.

18       ///

19       ///

20       ANSWER TO PLAINTIFF'S COMPLAINT AND  
21       DEMAND FOR JURY - page 7

22       *Evans, Craven & Lackie, P.S.*  
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## **CAUSE OF ACTION NO. 2 – VIOLATION OF RCW 49.60.180**

3.11 Paragraph 3.11 of Plaintiff's Complaint consists of legal conclusions to which no response is deemed necessary. To the extent a response is deemed necessary, HSD denies all allegations in this paragraph.

3.12 HSD denies the allegations contained in Paragraph 3.12 of Plaintiff's Complaint.

3.13 HSD denies the allegations contained in Paragraph 3.13 of Plaintiff's Complaint.

## CLAIM FOR LIQUIDATED DAMAGES

3.14 Paragraph 3.14 of Plaintiff's Complaint consists of legal conclusions to which no response is deemed necessary. To the extent a response is deemed necessary, HSD denies all allegations of liability.

3.15 Paragraph 3.15 of Plaintiff's Complaint consists of legal conclusions to which no response is deemed necessary. To the extent a response is deemed necessary, HSD denies all allegations of liability.

#### IV. PRAYER FOR RELIEF

HSD denies that Plaintiff is entitled to any relief from HSD in this matter, and further denies the existence, nature and extent of Plaintiff's claimed injuries and damages.

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## JURY DEMAND

In accordance with F.R.C.P. 38 and pursuant to the Seventh Amendment, Defendant hereby joins in Plaintiff's demand that this matter appear before a jury.

## AFFIARMATIVE DEFENSES

1. Plaintiff failed to seek reemployment with Defendant upon her return from leave, and as such, she failed to state a claim upon which relief can be granted;

2. Plaintiff failed to maintain her teaching certificate as required by Washington law, and therefore was not “qualified” as required by USERRA in order to return to her teaching position with Defendant.

3. Plaintiff has failed to mitigate her damages, if any.

4. Plaintiff's claimed injuries and damages are the result of Plaintiff's own actions or inactions.

DATED this 22<sup>nd</sup> day of March, 2021.

EVANS, CRAVEN & LACKIE, P.S.

By: *s/ Michael E. McFarland, Jr.*  
MICHAEL E. McFARLAND, JR., #23000  
Attorneys for Defendant

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## CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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s/ Michael E. McFarland, Jr.  
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